Single Bench

(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT

BILASPUR

W.P.NO. 01 / 2005

Petitioner : Dwarika Prasad S/o Late Shri Sewak Ram, Aged about 42 years, Caste Gond (S.T.), R/o Village Gangdwari, P.O. Sildaha, P.S.Patharia, Tah : Mungeli, Dist : Bilaspur-(C.G.)

Versus

Respondents :1. State of Chhattisgarh, Through The Secretary, Panchayat & Development of Urban / Local Administration, Mantralaya, D.K.S Bhawan, Mantralaya, Raipur-(C.G.)

2. The Chhattisgarh State Election Commission, Through Its Secretary / Commissioner Mahanadi Khand, Mantralaya, Parisar, Raipur-(C.G.)

3. The Collector, Dist : Bilaspur-(C.G.)

4. The Chief Executive Officer, Janpad Panchayat Patharia, Block Patharia, Tahsil Mungeli, Dist : Bilaspur-(C.G.)

5. The Secretary, Gram Panchayat Gangdwari, Block Patharia, Tahsil Mungeli, Dist : Bilaspur-(C.G.)

R.P. No. 07/05 Presented by Shri Bharat Nyak dated 03-01-05

Registration Copy 7/1/05 Asstt. to A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 1/ सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	10.1.2005 Shri Bharat Rajput, counsel for the petitioner. Shri Naval Kishore Agrawal, Deputy Advocate General for the State/respondents No.1 and 3. Shri Pramod Kumar Verma, Panel Lawyer for respondent No.2. Reply has already been filed on behalf of the State/respondents No.1 and 3. As reply has already been filed on behalf of the State/ respondents No.1 and 3, therefore, arguments of counsel for the respective parties were heard for final disposal of the petition. The petitioner by this writ petition under Article 226/227 of the Constitution of India has questioned the legality, propriety and correctness of the order dated 25.11.2004 (Annexure P-3) passed by respondent No.3 i.e. Collector, Bilaspur, whereby the learned Collector changed the category of Gram Panchayat: Gangdwari from Scheduled Tribe (Male) to Scheduled Caste (Male). The petitioner's case is that he is an active social worker and residing in the territorial jurisdiction of Gram Panchayat: Gangdwari, Block: Patharia, District: Bilaspur since his parental times and he belongs to Scheduled Tribe being Gond by caste, therefore, the impugned order dated 25.11.2004 passed by the Collector is contrary to the provisions of Section 17 (4) of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Act'), as such, the impugned order is illegal. On the other hand, as per the reply filed by the State/ respondents No.1 and 3, on the date when the constituencies were	

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मामला क्रमांक W.P. No. 1 सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक, तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

categorized i.e. 22nd September, 2004, the petitioner was not the voter of Village Panchayat: Gangdwari, whereas he was the voter of Gram: Jhilga, Gram Panchayat: Bharewa, District: Durg. After declaring the Panchayat: Gangdwari as reserved category for Scheduled Tribe (Male) the petitioner moved an application before the Registering Officer on 9.10.2004 in order to take the benefit of reserved constituency and got his name included in the voter list of Village Panchayat: Gangdwari. When the villagers of Village: Gangdwari came to know about this fact they made a complaint on 25.10.2004 to the Joint Director, Panchayat, that the petitioner herein is not the resident of Village: Gangdwari and his name has been included in the voter list incorrectly. On this complaint, enquiry was made and the Sub Divisional Officer vide its communication dated 27.10.2004 authorized the Additional Tehsildar for enquiring into the complaints, and in pursuance of that meeting of the Panchayat villagers' (Gram Sabha) was convened on 29.10.2004 in which it was resolved that no member of any Scheduled Tribe is voter of Village Panchayat: Gangdwari and the family of the petitioner is residing in Village: Jhilga, District: Durg. Accordingly, a report was made to the Collector, and the Collector after examining the report and the Government order dated 15.10.2004 (Annexure R-9) passed the impugned order whereby Gram Panchayat: Gangdwari was excluded from the reserved category of Scheduled Tribe and changed to Scheduled Caste category.

I have heard learned counsel for the parties.

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मामला क्रमांक W.P. No. 1/ **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned counsel for the petitioner argued that the petitioner is a permanent resident of Village: Gangdwari and he has got ancestral land in that village, therefore, his name was correctly included. He also submitted that residence certificate was issued to the petitioner on 20.11.2004 by the Sarpanch, Gram Panchayat: Gangdwari. He further submitted that in view of the above, the petitioner was voter of Village: Gangdwari and the impugned order passed by the Collector is contrary to the law i.e. Section 17 (4) of the Act, and before passing the order the petitioner was not heard.

On the other hand, learned Deputy Advocate General appearing on behalf of the State/respondents No.1 & 3 and learned Panel Lawyer appearing on behalf of respondent No.2 argued that as per the Census 2001, relevant portion of which is Annexure R-10, no person belonging to Scheduled Tribe was residing in Village: Gangdwari and even when Gangdwari Panchayat was categorized as Scheduled Tribe on 22.9.2004, on that date the petitioner was not the voter of Gram Panchayat: Gangdwari, he got his name included only on 15.10.2004, whereas, he was already voter of Village: Jhilga, District: Durg, even today. Therefore, in the first instance, one cannot be a voter of two villages. The petitioner got included his name in Village Panchayat: Gangdwari on 15.10.2004 much after when the Panchayat was categorized as Scheduled Tribe and on that day there was no Scheduled Tribe person residing in Village: Gangdwari, and no Scheduled Tribe person was voter of that Panchayat. In the circumstances, the decision taken by the Collector

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मामला क्रमांक W.P.No.1/ **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

is in accordance with the provisions, according to proviso to Sections 17 (4) and 33-A of the Act.

Having heard learned counsel for the parties, I have perused the documents and the petition.

In this connection, clause (f) of Article 243 of the Constitution of India defines "population". *"Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.* Article 243-D which deals with Reservation of Seats envisages that *"(1) Seats shall be reserved for--(a) the Scheduled Castes; and (b) the Scheduled Tribes, in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat."* Clause (xix) of Section 2 of the Act defines "population". *"Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.* Proviso to sub-section (4) of Section 17 of the Act also refers that *"the Gram Panchayat, which has no population of Scheduled Castes or Scheduled Tribes or other Backward Classes, shall be excluded for allotment of seat reserved for Scheduled Castes, Scheduled Tribes or other Backward Classes, as the case may be".* Therefore, a conjoint reading of clause (xix) of Section 2 and proviso to sub-section (4) of Section 17 of the Act with clause (f) of Article 243 and Article 243 (d) of the Constitution of

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मामला क्रमांक W.P.No.1 **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

India, makes it clear that population for the purposes of reservation is to be seen from the figures of last preceding census, and according to that population of last preceding census the reservation is to be made. As per the extract of Census 2001 of Gram Panchayat: Gangdwari there was no Scheduled Tribe population in that village. Moreover, it is evident from the record and admitted position that the petitioner is still voter of Village: Jhilga, District: Durg, and therefore, so long, the petitioner is voter of that village, in view of Representation of People Act, 1951, no person is entitled to be voter of two places. But, even then the petitioner moved an application before the Registering Officer of Village: Gangdwari on 9.10.2004 for inclusion of his name in the voter list of Village Panchayat: Gangdwari which was contrary to the provisions of Representation of People Act, 1951.

As has been mentioned above, when the villagers came to know that Village: Gangdwari has been reserved for Scheduled Tribe category, they made a complaint to the Joint Director, Panchayat, Bilaspur, for the mistake crept-in in reserving the Panchayat as Scheduled Tribe, as there was no voter of Scheduled Tribe in Village: Gangdwari. Accordingly, the Sub Divisional Officer was directed to conduct enquiry and the S.D.O. authorized the Additional Tehsildar, Patharia, to conduct enquiry, and in pursuance of that a meeting of Gram Sabha was convened on 29.10.2004 in which it was resolved that there was no voter in the village belonging to Scheduled Tribe, as such, a request was made for changing of category and the Gram Sabha specifically said that the petitioner herein is the resident of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Village: Jhilga. On receiving this report, the Collector in view of the authorization dated 15.10.2004 issued by the Government initiated proceedings under the powers enabling under proviso to sub-section (4) of Section 17 and Section 33-A of the Act.

Sub-section (4) of Section 17 of the Act envisages that "*the seats reserved under this section shall be allotted by the prescribed authority in the Gram Panchayat within the block by rotation in the prescribed manner*". Proviso to this section envisages that "*the Gram Panchayat, which has no population of Scheduled Castes or Scheduled Tribes or other Backward Classes, shall be excluded for allotment of seat reserved for Scheduled Castes, Scheduled Tribes or other Backward Classes, as the case may be*". It is an admitted position that when Panchayat: Gangdwari was reserved for ST (Male) category by order dated 22.9.2004, the petitioner was not voter of Gram Panchayat: Gangdwari, his name was included only on 15.10.2004 on an application filed by him on 9.10.2004. It is also evident from the voter list of Village: Jhilga (Annexure R-4) that the name of the petitioner finds place at S.No.1403. Therefore, admittedly he was the voter of Village: Jhilga. Moreover, as per Census 2001, there was no population of Scheduled Tribe in Village: Gangdwari.

Section 33-A of the Act envisages that "*notwithstanding anything contained in the Act or the rules made thereunder, the clerical error or omission apparent on the face of the record regarding reservation of seats under sub-sections (4), (5) and (6) of Section 13, sub-sections (2), (3) and (4) of Section 17, apart from other sections, may be corrected by the prescribed authority with the prior permission*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of the State Government or the officer authorized by it for the purpose, at any time before the commencement of election proceedings". Therefore, the Collector was entitled to initiate proceedings for correction as per the provisions of Section 33-A of the Act, and he exercised the power under this Section under the authority of the State Government (Annexure R-9) issued on 15.10.2004.

In view of the above fact, I do not find any illegality, infirmity or incorrectness in the order passed by the Collector, Bilaspur.

In the result, the petition is not maintainable, same is liable to be dismissed and it is accordingly, dismissed. No costs.

Consequently, M.(W.)P.No.4/2005 and I.A.No.24/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Soma

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13/1/05